Supreme Court, U.S.
FILED
MAR 16 1998
OFFICE OF THE CLERK

No. 971523

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

RONALD MATTEI, Individually and as Executor of the Estate of Louis J. Mattei and MARY LAURA MATTEI, - - - - *Petitioners,*

versus

MARIA MATTEI, - - - - - - - *Respondent.*

On Petition for Writ of Certiorari from the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR WRIT OF CERTIORARI

---

*WALTER L. SALES
THOMAS M. WILLIAMS
OGDEN NEWELL & WELCH
1700 Citizens Plaza
Louisville, Kentucky 40202
(502) 582-1601
Counsel for Petitioners

*Counsel of Record

March 13, 1998

WESTERFIELD-BONTE CO., 619 W. KENTUCKY–P.O. BOX 3251, LOUISVILLE, KY.

62 pp

QUESTIONS PRESENTED

Should ERISA's anti-retaliation provision, 29 U.S.C. § 1140 (ERISA § 510) be extended to include a state law estate dispute not involving the workplace, or should ERISA § 510 be limited to matters involving the employer-employee relationship?

Should ERISA § 510 provide federal jurisdiction over a "garden variety state law contract dispute" not involving an employment relationship, an employer, a benefit plan or its fiduciaries?

LIST OF PARTIES

Parties before this Court

Ronald Mattei, Individually and as Executor of the Estate of Louis J. Mattei, and Mary Laura Mattei, Petitioners

Maria Mattei, Respondent

Parties to the Proceeding Below

(United States Court of Appeals for the Sixth Circuit No. 96-5443)

Maria Mattei, Appellant

Ronald Mattei, Individually and as Executor of the Estate of Louis J. Mattei, and Mary Laura Mattei, Appellees

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISION INVOLVED	2
STATEMENT OF CASE	2
A. Material Facts	2
B. Proceedings Below	4
REASONS FOR GRANTING THE PETITION	5
A. The Decision Concerns the Limits of an Important Provision of ERISA and Creates a Conflict in the Circuit Courts of Appeal	5
B. The Court Should Exercise its Supervisory Power Because this Decision Will Unnecessarily Intrude upon the State's Right to Regulate Antenuptial Agreements and Will Upset "The Deliberate Balance Central to ERISA"	7
CONCLUSION	11
APPENDIX	1a–44a
Opinion of Sixth Circuit Court of Appeals	1a
Memorandum and Order of U.S. District Court	36a
Orders of Sixth Circuit Court of Appeals denying (1) Petition for Rehearing and (2) Petition for Rehearing en Banc	42a
29 U.S.C. § 1140 (ERISA § 510)	44a

TABLE OF AUTHORITIES

PAGE

Cases:

Blake v. *H-2A and H-2b Voluntary Employees' Beneficiary Association*, 952 F.Supp. 927 (D. Conn. 1997) 7

Boggs v. *Boggs*, 117 S.Ct. 1754 (1997) 8, 9

California Div. Of Labor Standards Enforcement v. *Dillingham Construction, N.A., Inc.*, 117 S.Ct. 832 (1997) 7

DeBuono v. *NYSA-ILA Medical and Clinical Services Fund*, 117 S.Ct. 1747 (1997) 7

Haberern v. *Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan*, 24 F.3d 1491 (3rd Cir. 1994), *cert. denied*, 115 S.Ct. 1099 (1995) 6

Hines v. *Massachusetts Mutual Life Ins. Co.*, 43 F.3d 207 (5th Cir. 1995) 7

McGath v. *Auto-Body North Shore, Inc.*, 7 F.3d 665 (7th Cir. 1993) 6

New York State Conf. of Blue Cross & Blue Shield Plans v. *Travelers Ins. Co.*, 514 U.S. 645 (1995) 7

Rogers v. *Jefferson-Pilot Life Insurance Company*, 883 F.2d 324 (4th Cir. 1989) 6

Rose v. *Rose*, 481 U.S. 619 (1987) 9

Sears, Roebuck and Co. v. *San Diego County District Council of Carpenters*, 436 U.S. 180 (1978) 10

Swanson v. *U.A. Local 13 Pension Plan*, 779 F.Supp. 690 (W.D. N.Y 1991) *aff.* 953 F.2d 636 (2d Cir. 1991) 6

West v. *Butler*, 621 F.2d 240 (6th Cir. 1980) ... 4, 5, 6, 10

Woolsey v. *Marion Laboratories, Inc.*, 934 F.2d 1452 (10th Cir. 1991) 6

Zschernig v. *Miller*, 389 U.S. 429 (1968) 9

Statutes:

29 U.S.C. § 1140 (ERISA § 510) 2

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

RONALD MATTEI, Individually and as Executor of the Estate of Louis J. Mattei and MARY LAURA MATTEI, - - - - - - *Petitioners,*

versus

MARIA MATTEI, - - - - - - - *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is reported at *Mattei* v. *Mattei*, 126 F.3d 794 (6th Cir. 1997). The Opinion of the Chief Judge Charles Simpson of the United States District Court for the Western District of Kentucky is not reported but is appended hereto.

JURISDICTION

The date of the Judgment sought to be reviewed was September 25, 1997. Appellees' Suggestion for Rehearing

En Banc was denied on November 12, 1997. Appellant's Petition for Rehearing was denied on December 18, 1997. This petition is timely filed within ninety days of December 18, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY PROVISION INVOLVED

This case involves the application of the anti-retaliation provision of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140 (ERISA § 510):

> **It shall be unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan**, this subchapter, section 1201 of this title, or the Welfare Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section. (emphasis added).

STATEMENT OF THE CASE

A. Material Facts.

The Respondent, Maria Mattei, is the second wife of Louis J. Mattei. She married him shortly before his death. The Petitioners (the "Estate") are the children of his first marriage. This dispute does not involve the deceased's employer, a benefit plan or its fiduciaries. It involves, quite simply, the Executor of the Estate of the deceased, the deceased's children, and his second wife.

On December 1, 1990, Maria and Louis Mattei entered into an antenuptial agreement that provided Maria would receive $300 per week and the martial residence should she outlive Louis. Louis and Maria were married shortly thereafter. He died on December 28, 1991.

Louis Mattei's employer also maintained an employee benefit plan (the "Plan") that provided a death benefit. No provision was made for Maria to receive any benefits under the Plan. By operation of law, however, as the surviving spouse, she could seek this benefit.

On January 7, 1992, the Plan Administrator determined Maria was entitled to the death benefit of the Plan as the surviving spouse. Notwithstanding this result, in January 1992, the Estate began paying Maria Mattei $300 per week under the antenuptial agreement. Maria received the death benefit in a lump-sum on February 12, 1993. There are no further benefits of the deceased to distribute under the Plan.

The Estate continued to pay Maria $300 per week from January 1992 through December 14, 1994. Slightly less than two years after Maria received the lump-sum death benefit, the Estate ceased making weekly disbursements to Maria under the antenuptial agreement.

Instead of pursuing her claim in state court under the ante-nuptial agreement, Maria literally made a federal case out of this family law estate dispute. Maria pursued her claims under ERISA in federal court in the Western District of Kentucky. Unlike state law, ERISA provides attorney's fees to the prevailing party.

In the Complaint, Maria contends that the Estate's refusal to pay her weekly disbursements was intended to fine her and discriminate against her for exercising her right to the death benefit under the Plan. She makes this contention in spite of the fact that she already had received the entire death benefit, and in spite of the fact that

the weekly payments were ceased almost two years after she received that benefit. Moreover, Maria does not allege that the Executor ever asked her to surrender her rights to the Plan benefits.

B. Proceedings Below

The District Court had jurisdiction under 28 USC §§ 1331, 1367 and 2201. The Estate moved to dismiss under Fed. R. Civ. P. 12(b)(6) on the ground the Complaint failed to state a claim upon which relief may be granted. As will be explained below, this motion was supported by a clear line of Sixth Circuit precedent. Chief Judge Charles Simpson of the Western District of Kentucky agreed that the matter should be dismissed and granted the motion.

Citing the plan language of ERISA §510, Judge Simpson held that Maria was neither discriminated against nor fined for purposes of ERISA. The District Court reasoned the definition of "person" set forth in ERISA was limited to persons who stand in relationship to a beneficiary and whose position enables them to commit the acts prohibited by the statute. Without a connection to the workplace or the Plan, the Estate was not an employer and could not, therefore, fine or discriminate against Maria.

Also citing the seminal *West* v. *Butler*, 621 F.2d 240 (6th Cir. 1980), the District Court further held that the prohibited conduct must involve an employer-employee relationship, which is not present here. Recognizing the limits of § 510, Judge Simpson acknowledged that this case was a "garden variety state law contract dispute", (App. at 39a). He dismissed the ERISA claim with prejudice and the state law claims without prejudice.

An appeal followed. On September 25, 1997, the Sixth Circuit, with Chief Judge Merritt in dissent, reversed the District Court and held that Maria had stated a claim under ERISA § 510. Dismissing the concern that a reversal would destroy the rational limits established by *West* v. *Butler*, the majority nevertheless found that its interpreta-

tion of § 510 would permit a retaliation action by "a third-party defendant who lost out to a plaintiff in a contest over ERISA benefits [and] sought revenge by defaming the plaintiff" (App. at 28a) even though "the third party gained back nothing by means of the defamation (App. at 28a)."

In his dissent, Chief Judge Merritt voiced the concern that the Sixth Circuit's reversal of long-established limitations would federalize family law: "[t]he Court expands the coverage of [§ 510] to family disputes that reach far beyond retaliation in the workplace." (App. 32a). He continued, "[i]f we continue to interpret vague terms of ERISA like 'discrimination' broadly to federalize claims touching upon ERISA benefits, **we will end up nationalizing much of the law of estates and trusts.**" (emphasis added), (App. at 34a).

REASONS FOR GRANTING THE PETITION

A. The Decision Concerns the Limits of an Important Provision of ERISA and Creates a Conflict in the Circuit Courts of Appeal.

The seminal case defining the scope of ERISA § 510 is, ironically, the Sixth Circuit's *West* v. *Butler*, 621 F.2d 240 (6th Cir. 1980) decision. The *West* decision is implicitly overruled or extended beyond recognition in the instant case. In *West*, the Sixth Circuit affirmed a dismissal of a claim brought under § 510 by pension fund trustees who sought to enjoin the defendants from picketing coal mines. This picketing allegedly resulted in reduced production, mine closings and employees who refused to cross the picket lines. The pension fund argued that the picketing interfered with the miners' rights to mine coal and thereby to obtain vested pension rights. The Sixth Circuit acknowledged that Congress designed § 510 to protect the employment relationship that gives rise to an individual's pension rights. *Id.* at 245. Holding that the plaintiff had not stated a cause of action under § 510, the Sixth Circuit

concluded that, to violate § 510, discrimination "**must affect the individual employment relationship in some substantial way.**" *Id.* at 246 (emphasis added).

In *West*, the Sixth Circuit found that ERISA § 510 was created as an ERISA stop-gap to protect "a worker's pension rights" from "the use of economic sanctions or violent reprisals". *Id.* at 245. The *West* court further premised its employment limitations on numerous references to the legislative record.

A review of the cases since *West* v. *Butler* shows that the case became the starting point for most federal court analyses of the existence of a claim under ERISA § 510. As of the date of the filing of this petition, the *West* decision has been either examined, discussed, cited or mentioned in one-hundred and thirty-four federal cases.

The instant decision turns that well-established jurisprudence on its head and creates a conflict among the Third, Fourth, Seventh and Tenth Circuits. *Haberern* v. *Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan*, 24 F.3d 1491 (3rd Cir. 1994), *cert. denied*, 115 S.Ct. 1099 (1995)(ERISA § 510 actions alleging discrimination are limited to actions affecting the employer-employee relationship); *Rogers* v. *Jefferson-Pilot Life Insurance Company*, 883 F.2d 324 (4th Cir. 1989)(court dismissed ERISA § 510 action because the section applies only against employers and not against insurers or other third party administrators); *McGath* v. *Auto-Body North Shore, Inc.*, 7 F.3d 665 (7th Cir. 1993)(fundamental prerequisite to an ERISA § 510 action is an allegation that an employer-employee relationship was changed in some wrongful way); *Woolsey* v. *Marion Laboratories, Inc.*, 934 F.2d 1452 (10th Cir. 1991)(no violation of ERISA § 510 because there was no employer-employee relationship).

The Second Circuit has conflicting district court opinions on the issue. Compare, *Swanson* v. *U.A. Local 13*

Pension Plan, 779 F.Supp. 690 (W.D. N.Y 1991) *aff.* 953 F.2d 636 (2d Cir. 1991)(while individuals may be liable under ERISA § 510, that section only reaches conduct that directly alters the employer-employee relationship in a fundamental way) with *Blake* v. *H-2A and H-2b Voluntary Employees' Beneficiary Association*, 952 F.Supp. 927 (D. Conn. 1997)(ERISA § 510 applies to nonemployers and matters that do not involve an employer-employee relationship).

The Fifth Circuit recognized the split of authority among the Circuits in *Hines* v. *Massachusetts Mutual Life Ins. Co.*, 43 F.3d 207, 210 fn5 (5th Cir. 1995). There, the court noted that some circuits have restricted the scope of ERISA § 510 to the employer-employee relationship. Noting the split and the failure of the parties to raise the issue below, the Fifth Circuit declined to make a decision and reserved the question for a later determination. *Id.*

Accordingly, the Court should grant this petition because it involves an important question that splits the Circuit Courts of Appeal.

B. The Court Should Exercise its Supervisory Power Because this Decision Will Unnecessarily Intrude upon the State's Right to Regulate Antenuptial Agreements and Will Upset "The Deliberate Balance Central to ERISA".

In recent decisions, this Court has decided several cases defining and limiting the reach of ERISA preemption and its interplay with state laws that impact benefits provided by ERISA plans. *DeBuono* v. *NYSA-ILA Medical and Clinical Services Fund*, 117 S.Ct. 1747 (1997)(state tax on gross receipts of health care facilities was not preempted by ERISA); *California Div. Of Labor Standards Enforcement* v. *Dillingham Construction, N.A., Inc.*, 117 S.Ct. 832 (1997)(California's prevailing wage law is not preempted by ERISA); *New York State Conf. of Blue Cross & Blue*

Shield Plans v. *Travelers Ins. Co.*, 514 U.S. 645 (1995) (New York statute that imposes surcharges on hospital rates for patients whose commercial insurance coverage is purchased by employee health care plans not preempted by ERISA). These cases clarify the scope and coverage of ERISA's substantive provisions and its interaction with the state's power to legislate and tax.

The scope of ERISA § 510 will be of central importance to this Nation as the work force ages and as the potential number of claims increases. In *Boggs* v. *Boggs*, 117 S.Ct. 1754, 1760 (1997), this Court highlighted the importance of the ERISA legislation:

> In large part the number of ERISA pre-emption cases reflects the comprehensive nature of the statute, the centrality of the pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force. ERISA is designed to ensure the proper administration of pension and welfare plans, both during the years of the employee's active service and in his or her retirement years.

The *Boggs* case is "at the intersection of ERISA pension law and state community property law." *Id.* at 1760. Like the Sixth Circuit case below, *Boggs* involved a dispute between a surviving second spouse of a deceased and the children of his first marriage. The surviving spouse sued the children seeking a declaratory judgment that ERISA preempted application of Louisiana's community property laws. That state law would have allowed the first spouse of the deceased to transfer to the children, by testamentary instrument, her interest in the undistributed pension plan benefits. There, the children's claim to benefits arose under the will and state law. Absent ERISA preemption, there was no question state law governed.

This Court held, however, that the state law scheme directly conflicted with ERISA provisions and frustrated the purposes of ERISA:

> ERISA's solicitude for economic security of surviving spouses would be undermined by allowing a predeceasing spouse's heirs and legatees to have a community property interest in the survivor's annuity. *Id.* at 1762.

In *Boggs*, this Court articulated many of the ERISA safeguards designed to guarantee that retirement funds are available when a plan's participants and beneficiaries expect them. Indeed, the Court stated,

> [t]he axis around which ERISA's protections revolve is the concepts of participant and beneficiary. When Congress has chosen to depart from this framework, it has done so in a careful and limited manner. Respondents' claims, if allowed to succeed, would depart from this framework, upsetting the deliberate balance central to ERISA. *Id.* at 1767.

If left unreviewed, the Sixth Circuit decision below likewise will upset the deliberate balance central to ERISA. The decision will permit the intrusion of ERISA into state regulation of antenuptial agreements. The state courts would, by the practical reality of ERISA attorney's fees provision, lose jurisdiction over matters long a state concern. The decision would make ERISA § 510 a sword that could be used offensively by participants and beneficiaries to the detriment of the state's legitimate interests in regulating disputes involving family, property and probate law—all areas of traditional state concern. See, *Rose* v. *Rose*, 481 U.S. 619 (1987); *Zschernig* v. *Miller*, 389 U.S. 429 (1968).

If *Boggs* is at the intersection of ERISA pension law and state community property law, this case is at the intersection of ERISA pension law and state family and probate law. No United States Supreme Court case has addressed the necessary limitations of ERISA § 510. Under the Sixth Circuit decision below, the plaintiff in *Boggs* would have a claim not only for benefits under ERISA, but

also an offensive claim under ERISA § 510 for retaliation damages.

Prior to the case now before the Court, the Sixth Circuit's *West* decision was the leading case defining the limits of ERISA § 510. The limitations set forth in *West* are now an accepted part of the jurisprudence of § 510. Part of the regular analysis of such claims is the existence of an employment relationship and some substantial affect on that relationship. The Sixth Circuit's decision here will have a profound affect on § 510 jurisprudence and exponentially expand federal jurisdiction over state law claims. Since ERISA provides attorney's fees to the prevailing party, the remedy would be attractive. Now, ERISA § 510 becomes a vehicle to federalize matters better left to common law and the state courts.

In its recent ERISA cases, this Court limited the reach of ERISA and left the state the power to tax and govern its affairs, so long as that legislation was not preempted by ERISA. Here, there is no employment relationship involved, there was no employment action taken against Maria, the Estate is not a Plan fiduciary or trustee and cannot independently exercise any control or influence over the Plan. The Plan paid Maria a lump sum benefit two years before she commenced this action. The Estate had no control over either the benefit or the underlying funds. Quite simply, if § 510 reaches this case, it reaches into the state courts better equipped to adjudicate family law disputes. If Maria's rights under the antenuptial agreement were breached, then state courts are an adequate forum to seek redress—as they always have been. Even in the presence of pervasive federal regulation, this Court has historically protected the power of the states to regulate in their principal domain when that regulation has been ancillary or tangential to the pervasive federal law. See, *Sears, Roebuck and Co.* v. *San Diego County District Council of*

Carpenters, 436 U.S. 180 (1978) (arguably protected character of union picketing does not provide sufficient justification for National Labor Relations Act preemption of state court jurisdiction over employer's trespass claim).

Should a "garden variety state law contract" become an ERISA § 510 action because benefits were involved? Should § 510 permit (as hypothesized by the Sixth Circuit) a retaliation action by "a third-party defendant who lost out to a plaintiff in a contest over ERISA benefits [and] sought revenge by defaming the plaintiff" even though the third party gained back nothing by means of the defamation? This is precisely the result the Sixth Circuit's decision will encourage and precisely why this Court should exercise its supervisory powers to prevent this overreaching of federal law in the name of leaving participants and beneficiaries free from retaliation.

In sum, ERISA has been an important concern of the Court, but the Court has not addressed ERISA § 510. The questions before the Court present an opportunity to construe ERISA in a manner consistent with recent decisions and the proper Congressional balance struck in the ERISA statute.

CONCLUSION

For the reasons stated, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

*WALTER L. SALES
THOMAS M. WILLIAMS
OGDEN NEWELL & WELCH
1700 Citizens Plaza
Louisville, Kentucky 40202
(502) 582-1601
Counsel for Petitioners

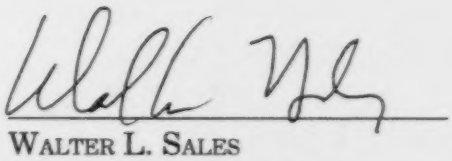
*Counsel of Record
March 13, 1998

CERTIFICATE OF SERVICE

I, Walter L. Sales, a member of the Bar of this Court, hereby certify that on this 13 day of March, 1998, three copies of the Petition for Writ of Certiorari in the above entitled case were mailed, first class postage prepaid, to:

Robert W. Griffith, Esq.
Michael I. Kanovitz, Esq.
Susan Canter Reisner, Esq.
Stites & Harbison
400 West Market Street, Suite 1800
Louisville, Kentucky 40202

I further certify that all parties required to be served have been served.



WALTER L. SALES
THOMAS M. WILLIAMS
OGDEN NEWELL & WELCH
1700 Citizens Plaza
Louisville, Kentucky 40202
(502) 582-1601
Counsel for Petitioners